

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 21

THREE STAR REFRIGERATION, INC.
d/b/a KOOL STAR and VOLT SERVICES GROUP;
A DIVISION OF VOLT MANAGEMENT CORP.

Employer

and

Case 21-RC-20732

MISCELLANEOUS WAREHOUSEMEN, DRIVERS
AND HELPERS, LOCAL 986, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION
ON CHALLENGED BALLOTS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING

This Report¹ contains my conclusions regarding the seven determinative challenged ballots. As set forth below, I conclude that the substantial and material factual issues of fact or law raised by the challenged ballots can best be resolved by a hearing.

Procedural Background

Pursuant to a Decision and Direction of Election, which issued on May 26, 2004, an election by secret ballot was conducted on June 25, 2004, among the employees of the Employer found appropriate for the purposes of collective bargaining.²

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² All production employees employed by the Employer, at or out of 15001 South Broadway, Gardena, California; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 34 eligible voters, 15 cast ballots for, and 8 against, the Petitioner. There were no void ballots and seven challenged ballots, which were sufficient in number to affect the results of the election.

The Challenged Ballots

During the election, the ballots of Mario Benitez, Ramon Bernal, Jose Espinoza Eduardo, Cruz Fernando Murguia, Gilberto Garcia, Oscar Granados, and Juan Carlos Moreno were challenged by the Board Agent since they are classified as leadmen and pursuant to the Decision and Direction of Election the leadmen were to vote subject to the challenged ballot procedure. The leadmen were challenged, inasmuch as it was not possible to determine whether the leadmen are supervisors as defined in Section 2(11) of the Act.

The Employer contends that all seven challenged ballots are leadmen and supervisors within the meaning of Section 2(11) of the Act, and are not eligible voters.

The Petitioner contends that all seven challenged ballots are not supervisors within the meaning of Section 2(11) of the Act, and asserts that they are eligible to vote herein as unit employees and their ballots should be opened and counted.

Based upon the evidence and the positions of the parties, the investigation disclosed that there are substantial and material issues of fact or law which can best be resolved after a hearing. Accordingly, I shall direct that a hearing be held concerning the challenged ballots of Mario Benitez, Ramon Bernal, Jose Espinoza Eduardo, Cruz Fernando Murguia, Gilberto Garcia, Oscar Granados, and Juan Carlos Moreno.

Conclusion

For the reasons set forth above and upon the investigation as a whole, I have concluded that the substantial and material issues of fact or law raised by the challenged ballots in the unit can best be resolved by a hearing thereon.

Order

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer of the National Labor Relations

Board for the purposes of receiving evidence to resolve the issues raised by the challenged ballots of Mario Benitez, Ramon Bernal, Jose Espinoza Edgardo, Cruz Fernando Murguia, Gilberto Garcia, Oscar Granados, and Juan Carlos Moreno

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report of fact and recommendations to the Board as to the resolution of the challenged ballots of Mario Benitez, Ramon Bernal, Jose Espinoza Edgardo, Cruz Fernando Murguia, Gilberto Garcia, Oscar Granados, and Juan Carlos Moreno. Within fourteen (14) days from the issuance of said report, any party may file with the Board an original and one (1) copy of exceptions to such report. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, on the undersigned Regional Director and the other parties to the proceeding. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.³

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 23rd day of July, 2004, at 9:30 a.m. PDT, **and such consecutive days thereafter until concluded**, in Hearing Room 903, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a hearing officer of the National Labor Relations Board upon the aforesaid issues, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matter.

DATED at Los Angeles, California on this 13th day of July, 2004.

/s/ Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

³ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69 (i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.